

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHARLES W. HECKMAN,

Plaintiff,

v.

STATE OF WASHINGTON AND UNITED  
STATES DEPARTMENT OF  
AGRICULTURE,

Defendants.

Case No. C04-5447RJB

ORDER

This matter comes before the court on the United States' Motion to Dismiss and Motion for Stay Pending Resolution of United States' Motion to Dismiss. Dkt. 27. The court has reviewed the relevant record herein.

On May 27, 2005, the United States filed a motion to dismiss and a motion for stay pending resolution of the motion to dismiss. Dkt. 27. On June 8, 2005, plaintiff filed response to the United States' motion. Dkt. 30. Along with his response, plaintiff filed materials that are outside of the pleadings. Dkt. 31. Those documents are relevant to the issues before the court.

A motion to dismiss made under Federal Rule of Civil Procedure 12(b)(6) must be treated as a motion for summary judgment under Federal Rule of Civil Procedure 56 if either party to the motion to dismiss submits materials outside the pleadings in support or opposition to the motion, and if the district court relies on those materials. Fed.R.Civ.P. 12(b)(6); *Jackson v. Southern California Gas Co.*, 881 F.2d 638, 643 n. 4 (9th Cir.1989) ("The proper inquiry is whether the court relied on the extraneous matter.").

1 Failure to treat the motion as one for summary judgment would constitute reversible error. See *Bonilla v.*  
2 *Oakland Scavenger Co.*, 697 F.2d 1297, 1301 (9<sup>th</sup> Cir. 1982); *Costen v. Pauline's Sportswear, Inc.*, 391  
3 F.2d 81, 84-85 (9th Cir. 1968). A party that has been notified that the court is considering material beyond  
4 the pleadings has received effective notice of the conversion to summary judgment. See *Grove v. Mead*  
5 *Sch. Dist. No. 354*, 753 F.2d 1528, 1533 (9th Cir.), *cert. denied*, 474 U.S. 826 (1985); *Townsend v.*  
6 *Columbia Operations*, 667 F.2d 844, 849 (1982).

7 In this case, in addition to other arguments, plaintiff contends that the USDOA violated the Privacy  
8 Act by disclosing information to a prospective employer, and that this disclosure occurred after any  
9 decisions were rendered in administrative and judicial proceedings in the federal and state courts. Plaintiff  
10 has provided documents outside of the pleadings, and these documents are relevant to this issue.  
11 Defendant United States' motion to dismiss should be converted to a motion for summary judgment under  
12 Fed.R.Civ.P. 56.

13 The United States' motion to stay discovery pending resolution of the United States' dispositive  
14 motion is currently noted for June 24, 2005. See Dkt. 27. That motion should remain on the court's June  
15 24, 2005 calendar.

16 Plaintiff is notified that the United States has filed a motion for summary judgment. If one of the  
17 parties files a Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56, the opposing party must  
18 respond, by affidavits or as otherwise provided in Rule 56, and must set forth specific facts showing that  
19 there is a genuine issue for trial. In the event defendant files a motion for summary judgment by which it  
20 seeks to have his case dismissed, plaintiff is notified that summary judgment under Rule 56 of the Federal  
21 Rules of Civil Procedure will, if granted, end his case against that defendant.

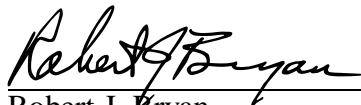
22 Rule 56 tells plaintiff what he must do in order to oppose a motion for summary judgment.  
23 Generally, summary judgment must be granted when there is no genuine issue of material fact—that is, if  
24 there is no real dispute about any fact that would affect the result of plaintiff's case, the party who asked  
25 for summary judgment is entitled to judgment as a matter of law, which will end plaintiff's case. When a  
26 party the plaintiff is suing makes a motion for summary judgment that is properly supported by declarations  
27 (or other sworn testimony), plaintiff cannot simply rely on what his complaint says. Instead, plaintiff must  
28 set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents,

1 as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents  
2 and show that there is a genuine issue of material fact for trial. If plaintiff does not submit his own  
3 evidence in opposition, summary judgment, if appropriate, may be entered against him. If summary  
4 judgment is granted, plaintiff's case will be dismissed and there will be no trial. *See Rand v. Rowland*, 154  
5 F.3d 952 (9<sup>th</sup> Cir. 1998).

6 Therefore it is hereby **ORDERED** that the United States' Motion to Dismiss and Motion for Stay  
7 Pending Resolution of United States' Motion to Dismiss (Dkt. 27), shall be **CONSIDERED** a motion for  
8 summary judgment. The United States' motion for summary judgment (Dkt. 27) is **RE-NOTED** for  
9 consideration on July 22, 2005. Plaintiff may file any further response to the United States' motion for  
10 summary judgment July 18, 2005. The United States may file a reply not later than July 21, 2005. If  
11 plaintiff does not file a response providing the appropriate documentation as described above, judgment  
12 may be granted in favor of the United States. If judgment is granted in defendant's favor, the case will be  
13 dismissed and there will be no trial. The United States' Motion for Stay Pending Resolution of United  
14 States Motion to Dismiss shall remain on the court's June 24, 2005 calendar.

15 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any  
16 party appearing *pro se* at said party's last known address.

17 DATED THIS 16<sup>th</sup> day of June, 2005.

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20 Robert J. Bryan  
21 U.S. District Judge  
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